

Testimony of LuAnne Kozma
To Michigan House Elections Committee
April 27, 2016

I'm the director of the Committee to Ban Fracking in Michigan. We are a grassroots campaign ballot question committee. I am a volunteer. No one is paying me to be here today.

Last April, the Board of Canvassers approved our petition as to form. Signature-gathering began and we collected over 150,000 signatures in 2015, the vast majority of them by volunteer circulators. That's right. Not much money involved. Just voters exercising our constitutional right to initiate laws and doing the heavy lifting ourselves.

One reason for the board's pre-approval of petition format, is the State wants petitions to be accurate and lawful so that when hundreds of thousands of voters sign a petition, it will be a valid petition and that their signatures will not be for naught.

The voters who sign our petition are your constituents. We don't ask people what political party they belong to. We are supposed to ask simply where they are registered to vote.

Everyone can see what is transpiring here by taking up Senate Bill 776 to further restrict the collection period. SB 776 is a naked blocking of our campaign and the marijuana campaign just weeks before the deadline.

Back when everyone thought that the Board of Canvassers' rebuttal procedure was so onerous that it would never be used, (and it hasn't been until now) the Legislature ignored it and never paid it any mind. But now there's a campaign that you seek to block, and the whole world can see that you are just attempting to shut down democracy, shut down the voters, shut down ballot initiatives.

Now that the full legal history of MCL 168.472a has come to light, rather than face it, both the Board of Canvassers—which hasn't said a peep about the issue in meeting month after month since December—except for Mr. Norman Shinkle's unethical disappearing act stunt on Monday when he left the meeting after two minutes to meet instead with a client and stating his position that it's not something he as a Canvasser has to deal with—and now the Senate are running from the simple truth that 472a is unconstitutional for statutory initiatives.

These same voters will vote in November and they will remember your actions here today.

There are other reasons why you should not pass this law.

It will cost the state money.

The State of Michigan is guaranteed at least two lawsuits over this.

The Committee to Ban Fracking in Michigan will sue. You've previously heard MILEgalize say the same thing, 100% guaranteed, they will sue over this.

You cannot make this law retroactive to affect the signers who signed this petition.

I'd like to call your attention to the statewide and national press that has criticized the Senate for passing SB 776. Already there have been damning articles calling out the Legislature in the Detroit Free Press, Truth-Out, Think Progress, and others.

Our Committee volunteers will not be intimidated by your repressive actions.

We will continue to collect signatures.

We will submit all of the signatures to the Board of Canvassers.

If they cannot see their constitutional duty to accept these signatures, we will sue. And we will win.

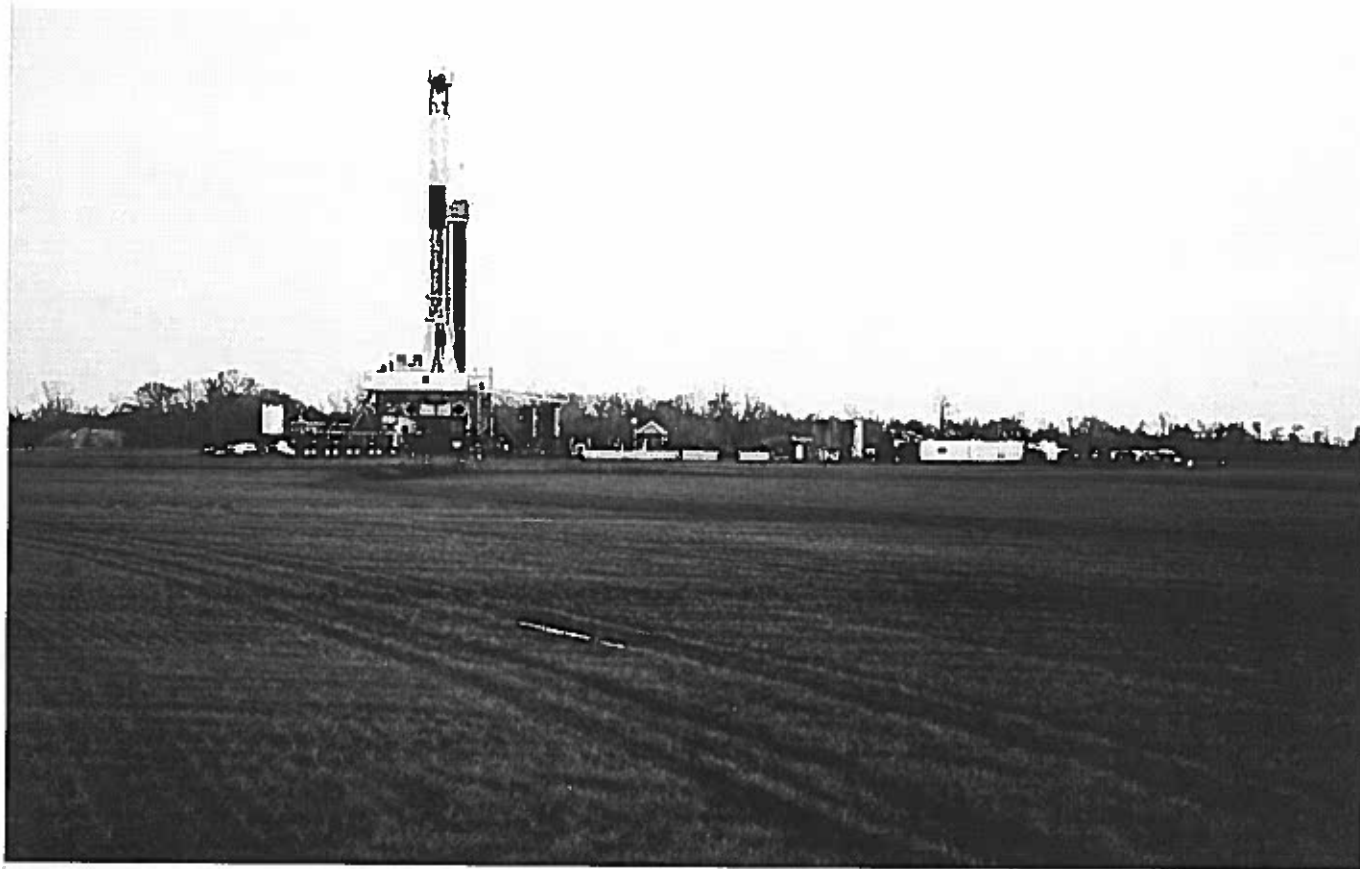
So fellow Michigan voters, Let's collect and let's ban fracking.

LuAnne Kozma
9330 Woods Road
Charlevoix, MI 49720

ALEC-Backed Lawmakers Stymie Anti-Fracking and Pro-Pot Ballot Initiatives

Tuesday, 22 March 2016 00:00

By Simon Davis-Cohen (/author/itemlist/user/48202), Truthout | Report



Activists pushing anti-fracking ballot initiatives in Michigan are being held up by state lawmakers. (Photo: Daniel Foster / Flickr (<https://www.flickr.com/photos/danielfoster/11526134686/>); Edited: JR / TO)

Activists in Michigan have been working on a statewide ballot initiative to ban fracking since 2012. It could be the first fracking law to appear on a state ballot in the United States. After failing to collect sufficient signatures in 2012 and 2013, and sitting 2014 out, the grassroots campaign again came up short when collecting in 2015 for the 2016 ballot. However, this time they responded by announcing they would continue collecting signatures -- they weren't stopping.

"It is not easy getting a grassroots initiative on the ballot. I think that's why our opponents are so scared of us."

As it turns out, a 1986 Michigan Supreme Court decision allows petitioners proposing statute-based initiatives (not constitutional amendments) to use signatures over 180 days old -- but not older than four years -- so long as the campaign is able to reverify the older signatures.

No campaign has ever attempted this, as the process of reverifying the signatures with local election clerks has been prohibitively cumbersome.

But new technology is making it easier. The idea came from a group collecting signatures to legalize and tax recreational marijuana, which also fell short of qualifying for the 2015 ballot. The idea: to cross-reference the older signatures with the state's new digitized Qualified Voter File database. As the database is maintained by local clerks, the petitioners argue cross-referencing the signatures with the Qualified Voter File is equivalent to consulting the clerks.

Opposition to the Use of Signatures Over 180 Days Old

At first this technology seemed to offer a modern-day solution to expedite direct democracy, but a backlash to the innovation is quickly accelerating.

The state Board of Canvassers, a body appointed by the legislature and governor, has argued that the new mode of verification should not be allowed, and on March 10 a bill (SB 776), introduced by State Sen. David Robertson, which set a hard 180-day deadline for statutory initiatives, passed the Michigan Senate with a 70 percent supermajority.

House hearings on the bill have moved forward and petitioners are concerned the vote could be fast-tracked and held as soon as March 23.

If the Republican-controlled House is able to pass it with a supermajority, the bill would take immediate effect -- removing the fracking measure and the marijuana measure from the ballot and reshaping the national narrative headed into the 2016 elections.

"It is not easy getting a grassroots initiative on the ballot," said LuAnne Kozma, campaign director of the Committee to Ban Fracking in Michigan. "I think that's why our opponents are so scared of us, because we're doing it with no money."

Of the 150,000 signatures the group collected in 2015, 16,000 were collected by paid petitioners. Both campaigns need 252,523 valid signatures before June 1 in order to make it onto the 2016 ballot. Gutting the tools available to petitioners "is a bald attack on our campaign and on the State Constitution by our opponents in the oil and gas industry," Kozma said.

The legal wrangling over the 180-day requirement actually dates back to 1974, when Michigan's Attorney General Frank Kelley struck down the state legislature's new time limit. Kelley opined that the state's limited power to determine the "manner" in

which signatures are "signed and circulated" did not allow it to impose new time limits.

Then, in 1986, the Michigan Supreme Court fought back on behalf of the state legislature. After legal arguments were heard, the state's top court ruled that for the initiative in question, a proposed constitutional amendment, signatures were required to be gathered within the legislature's 180-day limit. This set a precedent for constitutional amendments, but statutory initiatives were not affected, and remained under the state's then four-year time limit. It was at this time that the state Board of Canvassers set the cumbersome process for reverifying signatures older than 180 days.

Supporters of the current effort to set a hard 180-day deadline for statutory initiatives through the passage of SB 776 include the Michigan Oil and Gas Association and the Michigan Chamber of Commerce. Michigan Senate Majority Leader Arlan Meekhof has also spoken out in strong support of the bill.

Both Meekhof and Robertson are members of the American Legislative Exchange Council (ALEC), a tax-exempt organization through which corporate representatives craft model legislation for conservative policy makers to introduce in their state legislatures.

The ALEC affiliation may be coincidental, but it is worth noting that ALEC passed a resolution to push reforms curbing the ballot initiative process, where it exists, in 2006.

The Significance of Ballot Initiatives in Michigan

In Michigan, the ballot initiative has emerged as one of the few ways Michiganders living under a far-right Republican legislature have been able to push progressive lawmaking. However, the state has done everything it can to stymie the process. When a \$10.10 minimum wage increase was proposed for the 2014 ballot, Gov. Rick Snyder orchestrated a political maneuver to undercut the initiative and remove it from the ballot. The process has also been used to propose renewable energy (2012) and other reforms that would not stand a chance in the legislature. And the direct referendum process has been used to resist emergency management legislation and other neoliberal policies passed by the state. All to say that direct democracy has taken on new political significance in the Great Lakes State.

And with this new significance has come increased attention.

Last year, the Citizens Research Council of Michigan (<http://crcmich.org/>), a nonprofit public affairs research organization, came out with a report asserting that "the current use of initiative and referendum in Michigan is not entirely consistent

with the motivations of those that advocated for their inclusion in the state Constitution 100 years ago. The fear at that time was that the legislature was controlled by special interests and the people needed a means to enact laws when those special interests did not find the proposals in their own interests."

The study proposed numerous drastic cutbacks to the process and was sponsored by CMS Energy Corporation, JPMorgan Chase & Co., DTE Energy Company, Earhart Foundation and others.

"These tools of democracy are valued and would be missed if they were eliminated, but a general sense of unease has created an opportunity to look at the use of these tools and processes required for their use," according to the study.

If SB 776 passes, Michigan would join Ohio, Utah, Arkansas and possibly others as states where ALEC-affiliated legislators have introduced or co-sponsored legislation curbing the ballot initiative process, since 2013. Colorado, the only other state where statewide fracking ballot initiatives have been proposed, has also seen a strong backlash resulting in reforms to the process itself. Other laws curbing the process, but not readily linked to ALEC have been passed in other states, while precedent-setting reforms to local initiative processes have been pushed and passed (<http://www.commondreams.org/views/2015/10/30/preempting-democracy-whats-not-being-voted-november-sinister>) in a number of states (<http://readthedirt.org/washington-supreme-court-decision-guts-local-ballot-initiative-process>) in the last year.

Both the anti-fracking and the marijuana campaigns have promised to sue if SB 776 goes into immediate effect.

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SIMON DAVIS-COHEN (/AUTHOR/ITEMLIST/USER/48202)

Simon Davis-Cohen is a New York City-based writer examining the powers of local governments and corporations in the United States. He can be reached through readthedirt.org (<http://readthedirt.org/>).

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POLITICS

Michigan Republicans Are Trying To Change Election Law To Stop Liberal Ballot Initiatives

BY [EMILY ATKIN](#) MAR 24, 2016 10:52 AM

CREDIT: AP PHOTO/CARLOS OROZCO

Graham Lowe, an instructor at Med Grow Cannabis College in Southfield, Mich., holds examples of three types of marijuana buds in his class.

Grassroots groups in Michigan say they're about to achieve something big. This year, if they get enough petition signatures, voters might get to decide at the ballot box whether to ban fracking and legalize marijuana.

There's just one problem: the state's Republican lawmakers are now trying to change the rules in the middle of the game.

They are trying to cut us off and force us into court.

The lawmakers aren't opposing marijuana legalization or fracking bans on their merits — they're trying to change election law to make it harder for citizen groups to get their issues on the ballot in the first place. Their bill to change citizen lawmaking in Michigan has so far been supported by the [American Petroleum Institute](#), the [Michigan Oil and Gas Association](#), and the Michigan Chamber of Commerce.

It could land on Republican Gov. Rick Snyder's desk as soon as this week.

"They are trying to stop [us] cold," said [LuAnne Kozma](#) of the Committee to Ban Fracking In Michigan.

"They are trying to cut us off and force us into court."

'Let's just change the law and get rid of the opportunity'

Both the pro-marijuana and anti-fracking groups in Michigan say they are relatively close to achieving the 252,523 valid signatures they need to get their respective issues on the state's ballot in 2016.

They have one problem, though: Some of their signatures are too old. Michigan election law states that all signatures for citizen-led ballot initiatives need to be collected over a period of only 180 days. The law also states that signatures can still be counted if they're older than 180 days, but only if the groups verify them. And the verification process is onerous — the groups have to get individual physical affidavits from each person who signed, stating that they were registered to vote at the time.

The Legislature stepped in and said, okay, let's just change the law.

So, for the last six months, the groups have been trying to clarify the verification process. Last year, attorney and marijuana activist Jeff Hank asked the state Board of Elections to allow older signatures be verified through the state's electronic database of registered voters, called the Qualified Voter File. That, Hanks said, would make it easier to verify their older signatures.

The Board of Elections agreed with Hanks, noting that the Michigan state Constitution allows use of the Qualified Voter File "to determine the validity of petition signatures." In December, the Board of Elections formally asked the State Board of Canvassers to consider clarifying their policy to allow older signatures to be verified through the electronic Qualified Voter File system. The Board of Canvassers is currently deciding on this policy.

Here's where the state Republican lawmakers come in. Confronted with the possibility that the Board on Canvassers might say yes — that anti-fracking and pro-marijuana advocates might actually achieve enough valid signatures to get their issues on the ballot — lawmakers decided to preempt them. In February, state Sen. David Robertson proposed a law stating that petition signatures older than 180 days cannot be considered toward a citizen-led ballot initiative, no matter what.

"The Legislature stepped in and said, okay, let's just change the law and get rid of the opportunity to even allow [old] signatures to even be considered," Craig Theil, a senior research associate at the nonpartisan Citizens Research Council of Michigan, told ThinkProgress. "Let's have a hard and fast 180 day window."

Impacts beyond fracking and marijuana

So far, the bill has moved quickly. It passed the Republican-led Senate with a 70 percent supermajority one month after it was proposed, and on March 10, it headed to the House. It is expected to pass there as well, and land on Gov. Snyder's desk as soon as this week.

Obviously, pro-marijuana and anti-fracking advocates aren't happy about this. And they have good reason — Theil said it's almost certain that the bill was proposed specifically to make sure the two initiatives don't pass.

"Given the timing of the proposed change in policy, there's no way that this is not intended to disrupt the

There's no way that this is not intended to disrupt the possibility of adopting those policy changes.

possibility of adopting those policy changes," he said.

But Hanks said the bill threatens far more than just fracking and marijuana policy. It threatens the future of citizen lawmaking in Michigan. Already, he said, the process to get ballot initiatives is difficult — for one, it's expensive to try and get nearly 300,000 signatures in a period of six months, and grassroots groups like his own are historically not well-funded. Indeed, only 14 citizen-led legislative initiatives have reached the state ballot since 1913, and only eight of those succeeded.

Taking away the process for verifying petition signatures older than 180 days, he said, would make that process even more burdensome.

"If we lose this right, then we have no recourse really," he said. "It's going to be much harder to get issues on the ballot here."

The groups will sue — 'That's a promise'

If the bill is signed into law, Hanks said he would launch a lawsuit against the state — "One hundred percent, that's a promise," he said. Hanks argued the proposed law violates the state constitution, and that lawmakers shouldn't be able to change the petition process in the middle of an ongoing signature campaign.

If he's able to win — and the marijuana law makes it on to the ballot — Hanks said he not only believes marijuana would be legalized in Michigan, but more citizen groups would be empowered to mobilize, get petition signatures, and force people to vote on critical issues in the state.

"If we do this, and people see that, 'Hey, the stoners did it,' and that we were well enough organized to make the ballot, you're going to have other citizen groups that say, we can do this too," Hanks said.

GOP lawmakers target citizen initiatives



Brian Dickerson, Detroit Free Press Columnist

10:34 p.m. EDT March 26, 2016



(Photo: Carlos Osorio/AP)

Michigan's constitution gives voters the right to propose, via ballot initiative, legislation their elected representatives aren't interested in taking up. It's a sort of democratic fail-safe for the rare circumstance in which our elected representatives in Lansing aren't, shall we say, keenly responsive to the druthers of ordinary citizens.

Needless to say, the mere existence of such a fail-safe is a grievous affront to both legislators, who know better than their constituents, and the special interests who pay good money to keep sympathetic lawmakers in office.

Now, two term-limited Republican lawmakers are conspiring to make it a little harder for voters to circumvent the Legislature and its dark-money puppeteers. It's a generous gesture toward oil and gas companies anxious to sabotage an anti-fracking initiative some Michigan environmentalists seek to place on the November election ballot.

State Sen. Dave Robertson (R-Grand Blanc) and state Rep. Lisa Posthumus Lyons (R-Alto) chair the elections committees in their respective chambers, and you might guess that their responsibility for oversight of the electoral process would make them especially sensitive to the rights of Michigan voters. But you would be guessing wrong.

Keeping voters in their place

Robertson has spent much of his tenure as chairman of the Senate Elections and Government Reform Committee beating back initiatives that would make it easier for Michiganders to vote. In his most recent legislative coup, he succeeded in torpedoing legislation that would have authorized no-reason absentee voting throughout the state.



DETROIT FREE PRESS

[Make absentee voting easier? That's a GOP nightmare](#)

<http://www.freep.com/story/opinion/columnists/brian-dickerson/2015/06/20/reason-absentee-ballots/29015799/>



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[Dark money's servant in Lansing delivers](#)

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Lyons was the sponsor of that bill, and she was visibly distraught when Republican senators led by Robertson killed it in the closing hours of the Legislature's 2015 session. Lyons is in the last year of her third and final term in the House and is expected to seek the GOP nomination as secretary of state after closing out her legislative career. Had it passed, her bill to expand absentee voting eligibility might have been an attractive addition to her campaign resume.



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[Ruth Johnson backing new absentee voting bill](#)

<http://www.freep.com/story/news/local/2015/06/16/secretary-state-ruth-johnson-backs-absentee-voting-bill/28820807/>



All Michigan Republicans want is a permanent majority

(<http://www.freep.com/story/opinion/columnists/brian-dickerson/2015/12/19/michigan-gop-firewall/77547490/>)

But Lyons is no populist. Her chief accomplishment as chairwoman of the House Elections Committee came late last year, when her 11th-hour amendment transformed an uncontroversial 12-page housekeeping bill into a 55-page special-interest albatross that rewrote numerous sections of Michigan's campaign finance law to the advantage of her party's largest donors.

Now Lyons and Robertson are reprising their roles as special interest apparatchiks by flogging SB 776, which would effectively shorten the window in which groups proposing a ballot initiative must collect the hundreds of thousands of petition signatures needed to place their proposal before voters.

Raising the bar

Current Michigan law gives such petitioners 180 days to collect the requisite signatures, but requires the state to recognize older signatures if a petitioner can prove the signer is still a registered voter. SB 776 would abolish the procedure for rehabilitating such stale signatures, making it more difficult and expensive for petitioners to meet the ballot initiative requirements.

Who would want to make it harder for voters to place an initiative on the ballot?

Environmentalists say the effort is being spearheaded by Michigan's gas and oil industry, which wants to head off a petition drive that would ask Michigan voters to ban the use of horizontal hydraulic fracturing, also known as fracking (<https://ballotpedia.org/Fracking>), and prohibit the storage and disposal of fracking waste products.

Indeed, four organizations associated with that industry — the Michigan Oil and Gas Association, the Michigan Chemistry Council, the Michigan Manufacturers Association and the American Petroleum Industry — provided the only testimony in support of SB 776 at a hearing held earlier this month shortly after Robertson introduced the bill (although Republicans are also interested in blocking a marijuana legalization initiative that threatens to draw young voters to the polls if it makes the November ballot).

Republicans on Robertson's committee green-lighted the bill on March 8, and the full Senate passed it two days later on a straight party-line vote. Lyon's committee took up SB 776 a week later, and it appears to be on a similar rocket sled in the House.

Late last week, I called and e-mailed Robertson and Lyons to ask why, at a time when Michigan is under fire for ignoring the concerns of its citizens, they were championing legislation to place new limitations on voters' right to petition the Legislature.

There seems little risk that petitioners could pass off the signatures of voters who are no longer alive or eligible to vote in Michigan. The publicly accessible, continuously updated Qualified Voter list maintained by the Secretary of State allows both the petition circulators and the state Board of Canvassers to verify that signatures remain valid the day a petition is filed.

Indeed, it seems clear the only purpose of SB 776 is to hamstring the grassroots groups seeking to put the fracking ban and marijuana legalization on the November ballot. Robertson's original bill was scheduled to take effect next Jan. 1, but an amendment added on the Senate floor would make it effective immediately.

Lyons declined through a spokesman to answer my questions about the policy rationale for SB 776, or the oil and gas industry's role in flogging it, referring me to Robertson's office. Robertson, as is his habit when faced with inquiries about special interest legislation, did not respond to my calls.

In the era before term limits, Robertson, Lyons and their Republican colleagues might have thought twice about promoting a bill that is so nakedly designed to restrict the constitutional rights of ordinary voters.

But with the option of another term off the table, why should term-limited legislators pretend they serve anyone but the special interests who got them to Lansing in the first place?

Contact Brian Dickerson: bdickerson@freepress.com.